

REMARKS

The Examiner's rejection of claims 1-2 and 4 under 35 U.S.C. 102(b) as being anticipated by English (1,774,258) is respectfully traversed. In order for the Examiner to sustain an anticipation rejection under 35 U.S.C. 102(b), the reference cited in this case, English '258 patent, must contain each and every element of the claimed invention. The English reference does not contain a capsule that includes a first member and a second member having the structure recited in applicant's amended claim 1. Specifically, the second member must be moved relative to the first member to cut open the sealed closed bottom of the first member. As shown in English, Figure 3, the second member, which we assume, is element 9 is positioned only to cut open the top of element 2 designated as partition 4. Further, it is argued that the preamble of the claim requires a capsule that contains liquid and/or dry material to be subsequently dispensed into a container which is not remotely suggested or shown in the English reference. The English reference shows two separate compartments that are sealed from each other, not a single capsule that has a first member with an open end and a second member with an open end that together contain a material to be dispensed. It is the rupturing of the first member which has a sealed closed bottom that when ruptured allows the entire contents to be dispensed into a container. Applicant requests that the Examiner withdraw the rejection of claims 1, 2 and 4 as clearly not showing anticipation as required under 35 U.S.C. 102(b).

The Examiner's rejection of claims 1 through 4 under 35 U.S.C. 103(a) as being unpatentable over Bowes, Patent No. 3,156,369, hereinafter "Bowes '369" in view of English, U.S. Patent No. 1,774,258, is respectfully traversed. It is applicant's position there is no teaching or suggestion in either the Bowes '369 or the English '258 reference to take the cutting prongs shown in English '258 and use them in the Bowes '369 reference as a cutting edge. The primary reason

for the prongs is to ensure that the sealed bottom member does not fall into the material that is in the container. Thus, part of the sealed end will remain attached so that the entire sealed bottom is not severed. The English capsule shown is completely different in structure and function and it is totally non-analogous art as applied to the problem for dispensing materials into a container. It is applicant's position that the Examiner has failed to establish a prima facie obviousness in this case since there is absolutely no suggestion in the overall claimed combination to one of ordinary skill in the art.

The Examiner's rejection of claim 5 under 35 U.S.C. 103(a) as unpatentable over Bowes '369 and English '258 further in view of Rizzardi is respectfully traversed. Again, applicant reasserts the comments made about regarding the Bowes combination with English. Thus, even if the peripheral lip of Rizzardi was included, claim 5 would not be obvious to one of ordinary skill in the art because the English reference is non-analogous art and the combination is not suggested.

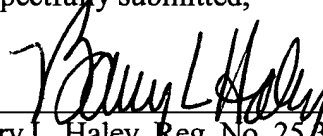
The Examiner's rejection of claim 6 under 35 U.S.C. 103(a) as being unpatentable over the references to Bowes and English as applied to claim 1 in further in view of Pittman is respectfully traversed. Again, it is applicant's position that the recitation of the English '258 reference is totally non-analogous art so that the combination as claimed in claim 6 would not have been obvious to one of ordinary skill in the art at the time of the invention.

It is applicant's position that even though this is an Amendment After Final, the Examiner's Final Office Action, which cited new art which was non-analogous, is not a prima facie obviousness rejection and, clearly, does not anticipate claims 1, 2 and 4 and does not make claims 1-6 obvious over the references cited. Applicant respectfully requests that the Examiner withdraw the rejections and that the claims are allowable as presented on their face.

In re Applicant: ANDERSON, Michael R.
Serial No: 10/605,873
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry L. Haley", is written over a horizontal line.

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